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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 NEXTDOOR.COM, INC., a Delaware
13 corporation,

14 Plaintiff,

15 v.

16 RAJ ABHYANKER, an individual,

17 Defendant.

Case No. 3:12-cv-05667-EMC-NMC

**DEFENDANT RAJ ABHYANKER'S
OBJECTIONS TO EVIDENCE OFFERED IN
NEXTDOOR.COM'S REPLY IN SUPPORT
OF PARTIAL SUMMARY JUDGMENT**

Date: October 16, 2014
Time: 1:30 P.M.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

19 Pursuant to L.Civ.R. 7-3(d)(1), Defendant Raj Abhyanker ("Abhyanker") objects to
20 certain evidence submitted by Plaintiff Nextdoor.com, Inc. ("Nextdoor.com") in its Reply in
21 Support of Its Motion for Summary Judgment on Counts II and IV of its Complaint (Dkt. 349
22 ("Reply")); specifically, evidence referred in and attached to the declarations of Jennifer Kelly
23 ("Kelly Declaration"), and David McCain ("McCain Declaration").

24 Initially, Abhyanker objects that evidence was supplied at all – and, certainly, in so much
25 volume – on reply, when that evidence could have been submitted by way of Nextdoor.com's
26 opening papers. Submission of copious evidence on reply sandbags the opposing party, which is
27 restricted by rule to a plain statement of objections against inadmissible evidence, without the

1 opportunity to argue the import, or lack thereof, of any evidence ultimately admitted and taken
 2 under consideration by the Court. Nextdoor.com should not have used its reply brief to so
 3 substantially build the evidentiary record.

4 **Objections to Evidence in and Attached to the Kelly Declaration**

5 The Kelly Declaration is objectionable because it attaches and refers to inadmissible
 6 hearsay.

7 Exhibit D to the Kelly Declaration is a copy of an email sent between Abhyanker's
 8 counsel and an expert witness in this case. Kelly Decl. ¶5. The statements therein, and reference
 9 to them in the body of the declaration, are inadmissible hearsay. They are offered for the truth of
 10 the matters asserted therein – not for the mere fact that they were sent, or for any other
 11 permissible reasons -- and thus fall outside of any hearsay exceptions under Fed.R.Evid. 803. *See*
 12 Fed.R.Evid. 801(c); Fed.R.Evid. 802; *In re Cygnus Telecomms. Tech., LLC, Patent Litig.*, No. C-
 13 04-04247 RMW, 2007 WL 2261543, at *3 n.6 (N.D. Cal. Aug. 6, 2007).

14 Exhibit F to the Kelly Declaration is a copy of the Expert Report of Patrick O'Leary.
 15 Kelly Decl. ¶6. These statements therein, and reference to them in the body of the declaration,
 16 are inadmissible hearsay. They are similarly offered for the truth of the matters asserted therein,
 17 and fall outside of any hearsay exceptions under Fed. R. Evid. 803. Expert reports are generally
 18 "not to be received in evidence without violating the hearsay rule . . .", *Sommerfield v. City of*
 19 *Chicago*, 254 F.R.D. 317 (N.D. Ill. 2008), and should not be considered for purposes of summary
 20 judgment review. *Smith v. Prudential Ins. Co. of Am.*, 864 F. Supp. 2d 654 (M.D. Tenn. 2012).

21 **Abhyanker's Objections to Evidence in and Attached to the McCain Declaration**

22 The McCain Declaration is objectionable because it attaches and refers to inadmissible
 23 hearsay.

24 First, Exhibit A to the McCain Declaration is a copy of expert McCain's report. McCain
 25 Decl. ¶¶4-8. The statements therein, and reference to them in the body of the declaration, are
 26 inadmissible hearsay. They are offered for the truth of the matters asserted therein, and fall
 27 outside of any hearsay exceptions under Fed. R. Evid. 803. Expert reports are generally "not to

1 be received in evidence without violating the hearsay rule . . .”, *Sommerfield v. City of*
 2 *Chicago*, 254 F.R.D. 317 (N.D. Ill. 2008), and should not be considered for purposes of summary
 3 judgment review. *Smith v. Prudential Ins. Co. of Am.*, 864 F.Supp.2d 654 (M.D. Tenn. 2012).
 4 To the extent that an expert witness independently attests to specific statements from the report in
 5 a submitted declaration, those statements would no longer be hearsay in that format; however,
 6 that fact still not does make submission of the expert report admissible as a declaration exhibit.

7 Exhibit B-F to the McCain Declaration is a copy of a series of Powerpoint presentation
 8 slides. McCain Decl. ¶6. These statements and references to them in the body of the declaration
 9 are inadmissible hearsay. They are offered for the truth of the matters asserted therein – that is,
 10 whether they reflect that Lorelei was or was not a target neighborhood so that its apparent
 11 absence can therefore show that it was not, in fact, a target neighborhood. The statements are
 12 offered for no other permissible reason. Thus, they fall outside of any hearsay exceptions under
 13 Fed.R.Evid. 803.

14 Exhibit G to the McCain Declaration is a set of copies of screenshots from the Fatpak
 15 website. McCain Decl. ¶7. These statements and references to them in the body of the
 16 declaration are inadmissible hearsay. They are offered for the truth of the matters asserted therein
 17 – that is, whether they reflect that Lorelei was in the target neighborhood drop-down menus so
 18 that its apparent absence can therefore show that it was not, in fact, a target neighborhood. The
 19 statements are offered for no other permissible reason. Thus, they fall outside of any hearsay
 20 exceptions under Fed.R.Evid. 803.

21 For the foregoing reasons, the above-described documents, and references to them in their
 22 respective declarations, should be excluded from consideration in support of Nextdoor.com’s
 23 Reply or for any other purpose requiring the support of admissible evidence.

24 Respectfully Submitted,

25 Dated: October 9, 2014

26 **LEGALFORCE RAJ ABHYANKER, P.C.**

27 /s/ David Lavine

David Lavine

Attorney for Defendant Raj Abhyanker

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